IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1326 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHREE LAXMI NARAYAN SYNTHETICS

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 1326 of 2004

MR KAMAL B TRIVEDI, Senior Advocate with
MR PARESH M DAVE for Petitioner No. 1-2
MS DHARMISHTA RAVAL for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 27/04/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

Rule.

Ms. DN Raval, learned Senior Standing Counsel for the Central Government waives service of Rule on behalf of the respondents.

In the facts and circumstances of the case, the petition is taken up for final disposal today.

2. What is challenged in this petition under Article 226 of the Constitution is the order dated 24.2.2003 of the Settlement Commission, Customs & Central Excise, Mumbai in Settlement Application Nos.13 and 31 of 2000 under Section 32F of the Central Excise Act, 1944.

3. The brief facts leading to filing of this petition, briefly stated, are as under:-

The petitioner is registered under the Central Excise Act, 1944 (hereinafter referred to as "the Act") to manufacture/process man-made fabrics. The searches carried out by the officers of the Central Excise at the premises of M/s. Balaji Industries, Surat, another processor, and it's folding and transport contractors on 6.11.1997 resulted into seizure of certain incriminating documents, indicating clandestine removal of processed fabrics by the petitioner. To verify the facts, the officers of the Central Excise Department searched the factory premises of the petitioner on 6.11.1997 and also its customers on 7.11.1997 and seized the documents for further investigation. It is not necessary to set out all the details of the material seized or the value of the material clandestinely removed. The Commissioner of Central Excise issued a common show cause notice to the petitioner and M/s. Balaji Industries, inter-alia, demanding central excise duty of Rs.2.13 Crores. The Commissioner of Central Excise passed order-in-original dated 24.2.1999 confirming the demand of Rs.2,18,88,141/and also imposed penalty of Rs.3 lakhs on Mr Rajendra Agarwal. The petitioner challenged the said order-in-original by filing appeal before the CEGAT. After permission was granted by the CEGAT, the petitioner withdrew the appeal and filed an application before the Settlement Commission under Section 32PA of the Act and admitted additional duty liability of Rs.28,07,319-08ps. Mr Rajendra Agarwal, partner of the petitioner, also filed an application before the Settlement Commission. The applications were heard by the Settlement Commission on 17.1.2001 an order was passed on 6.2.2001 with certain directions to the petitioners. After hearing, the interim order dated 27.4.2001 was passed allowing the applications to be proceeded with by the Commission. After giving adjustment of the amount paid by the merchant manufacturers towards admitted duty liability,

the petitioner was directed to pay the balance admitted amount aggregating to the total duty of Rs.28,07,319-08. By the impugned order, the Commission determined the excise duty liability of the petitioner at Rs.1,48,19,820/- and after giving credit of Rs.28,07,319/- already paid by the petitioner and the traders, the Commission held that the balance duty payable by the petitioner was Rs.1,20,12,501/-. Penalty of Rs.10 lakhs was also imposed on the petitioner. Certain directions regarding waiver of interest were granted in excess of 10%.

4. The impugned order is challenged on various grounds. However, it is not necessary to enumerate or deal with those challenges because the first and foremost contention of the learned counsel for the petitioner is that the Settlement Commission had taken into consideration the report dated 18.9.2002 submitted by the Additional Commissioner (Preventive) of the Central Excise & Customs, Surat-1 without supplying a copy thereof to the petitioner. Reference is made to internal page 5 of the impugned order wherein specific reference is made to the said letter in the following terms:-

> "The Revenue also submitted that detailed comments have been offered vide their letter dated 18.9.2002.
>
> The Commission has gone through the case records and the submissions made by the Applicant's representative and the Revenue."

It is, therefore, submitted that the impugned order is passed in violation of the principles of natural justice.

It is also pointed out by Mr Trivedi for the petitioner that earlier when Interim Order No.61 of 2002 was passed on 16.8.2002, the Commission had specifically noted as under:-

> "The Commission pointed out to the Revenue that there is a wide disparity in the amount demanded by the Revenue and the amount of admitted duty liability by the Applicants. The Commission directed the Revenue to put forth concrete evidence as to how the rest of the amount which is not admitted by the applicant is liable to be paid by them. ....
>
> The next date of the hearing is fixed on

19.9.2002 at 3.00 pm (Thursday)."

It is submitted that since the Commission did not find adequate material at the hearing on 13.8.2002, which culminated into interim order dated 16.8.2002, the Commission had called upon the Department to put forth concrete evidence as to how the rest of the amount which was not admitted by the petitioner was liable to be paid by them. It is submitted that at the final hearing before the Commission, the Revenue had submitted the aforesaid letter dated 18.9.2002 and no other concrete evidence was produced before the Commission and, therefore, the aforesaid letter dated 18.9.2002 must have heavily weighed with the Commission in determining the petitioner's liability at Rs.1.48 Crores as against the petitioner's admitted duty liability of Rs.28 lakhs.

5. On the other hand, Ms DN Raval, learned Senior Standing Counsel for the respondents has relied on the provisions of Section 32J and submitted that the petitioner was not entitled to get copies of any documents or report unless the petitioner made an application for obtaining such copes and the Commission thought it fit at its discretion to furnish copies thereof.

It is further submitted that under the provisions of Section 32M of the Act every order of the Settlement Commission passed under sub-section (7) of Section 32F shall be conclusive of the matters stated therein and no matter covered by such order shall be reopened in any proceeding and, therefore, the petition deserves to be dismissed.

6. Having heard the learned counsel for the parties, it appears to the Court that while Section 32J of the Act has a salutary object of conferring upon the Settlement Commission the discretionary power to decide whether copies of any report or document should be furnished to the assessee-petitioner, the question of the Settlement Commission exercising its discretion would arise when the assessee-petitioner would make an application for obtaining such copies and the occasion for the assessee-petitioner to make such an application would arise after it is brought to the notice of the assessee that any such report or document is brought to the notice of the Commission. There is nothing on record to show that the said letter dated 18.9.2002 of the Additional Commissioner (Preventive), Surat-1 was tendered before the Commission after giving any intimation in writing or orally about tendering of such document. The petitioner,

therefore, had no occasion to make any such application nor did the Settlement Commission have any occasion to exercise its discretion.

7. At this stage, it is also necessary to refer to the relevant provisions of the Act, which are as under:-

32F. Procedure on receipt of an application under Section 32E.

(1) to (6) ....

(7) After examination of the records and the report of the Commissioner of Central Excise received under sub-section (1), and the report, if any, of the Commissioner (Investigation) of the Settlement Commission under sub-section (6), and after giving an opportunity to the applicant and to the Commissioner of Central Excise having jurisdiction to be heard, either in person or though a representative duly authorised in this behalf, and after examining such further evidence as may be placed before it or obtained by it, the Settlement Commission may, in accordance with the provisions of this Act, pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the Commissioner of Central Excise and Commissioner (Investigation) under sub-section (1) or sub-section (6).

....

32J. Inspection, etc., of reports.- No person shall be entitled to inspect, or obtain copies of, any reports made by any Central Excise Officer to the Settlement Commission; but the Settlement Commission may, in its discretion furnish copies thereof to any such person on an application made to it in this behalf and on payment of the prescribed fee :

Provided that, for the purpose of enabling any person whose case is under consideration to rebut any evidence brought on record against him in any such report, the Settlement Commission shall, on an application made in this behalf, and on payment of the prescribed fee by such person, furnish him with a certified copy of any such report or part thereof relevant for the purpose."

8. On perusal of the aforesaid provisions it is clear that whenever any evidence is brought before the Settlement Commission, the assessee-petitioner will ordinarily have to be given an opportunity to meet with the same and it would only be in extraordinary circumstances that the Settlement Commission would be justified in shutting out any such adverse material being brought to the notice of the assessee. For instance, disclosure of confidential information contained in a report or document or disclosure of identity of the informant may expose some person or persons to the risk of loss of life or limb. The Commission may then be justified in permitting withholding copy of such document or report being given to the assessee or in providing for appropriate safeguards before directing a copy of such document or report being given to the assessee.

9. Nothing is pointed out in the facts of the instant case as to why a copy of the said letter dated 18.9.2002 should not be supplied to the petitioner. All that is stated in paragraph 17 of the affidavit-in-reply dated 29.3.2004 of the Deputy Commissioner of Central Excise is as under:-

> "As regards the detailed comments under letter dated 18.9.2002 submitted by respondents, it is submitted that the same is a departmental correspondence."

It is, of course, also submitted that the material facts regarding evasion of duty have been conclusively proved and the plea put forth by the petitioners will not change the factual position of evasion of duty.

In the facts of the present case, it is, however, not necessary to examine this contention urged on behalf of the respondents whether any material fact regarding evasion of duty would or would not change upon giving a copy of the said letter dated 18.9.2002 to the petitioner for the simple reason that in the order dated 23.1.2001 the Settlement Commission itself had recorded that the Commission directed the Revenue to put forth concrete evidence as to how the rest of the amount which is not admitted by the applicants is liable to be paid by them.

In view of this clear observation made in the said interim order dated 23.1.2001 and in view of the aforesaid statement in the reply affidavit, and that the respondents are not pleading that the letter in question

is of such nature that it would not be in public interest to supply a copy thereof to the petitioner, it will have to be held that the petitioner was entitled to get a copy of the said letter dated 18.9.2002.

10. At this stage, we would also like to make it clear that since this Court is exercising its discretionary extraordinary writ jurisdiction under Article 226 of the Constitution, and since the Commission had by the impugned order determined the excise duty liability of the petitioner at Rs.1.48 Crores and the petitioner had paid only Rs.28,07,319-08, the relief to be granted to the petitioner would be subject to the condition that the petitioner shall deposit with the respondent authorities a further sum of Rs.28 lakhs without prejudice to the rights and contentions of the parties.

11. On the short ground about violation of principles of natural justice, without going into the merits of the controversy which was examined by the Settlement Commission, subject to the condition stipulated hereafter, we set aside the impugned order dated 24.2.2003 of the Settlement Commission with a direction to the Settlement Commission to supply the petitioner with a copy of the letter dated 18.9.2002 within two weeks from the date of receipt of writ of this Court and thereafter give an opportunity of hearing to the petitioner.

It is clarified that after supply copy of the aforesaid letter dated 18.9.2002, the Settlement Commission shall hear the petitioner on the contents of the said letter dated 18.9.2002 and thereafter the Settlement Commission shall decide the matter in accordance with law.

The above directions are given subject to the condition that the petitioner deposits a further sum of Rs.28 lakhs (without prejudice to the rights and contentions of the parties) over and above the sum of Rs.28,07,319-08 ps. paid by the petitioner earlier. The said amount of Rs.28 lakhs shall be paid in four equal monthly installments of Rs.7 lakhs each; first installment to be paid by 15th May 2004.

12. Subject to the above condition, the petition is accordingly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. SHAH, J.)

(A.M.KAPADIA, J.)
zgs/-